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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 07 2007

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

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INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and additional evidence. For the reasons discussed below, we find that the petitioner has established his eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Metallurgical Engineering from the University of Wisconsin-Madison. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary

merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, materials science, and that the proposed benefits of his work, more efficient and environmental modeling and manufacture of various materials, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

On appeal, the petitioner asserts that his current employer does not pursue alien employment certification for its postdoctoral associates. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the alien employment certification process. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 223. Moreover, it is the position of Citizenship and Immigration Services (CIS) to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization or for entry-level and typically temporary postdoctoral positions at national laboratories. *See id.* at 217.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner obtained his Ph.D. in Metallurgical Engineering in May 2004 from the University of Wisconsin-Madison. The petitioner then accepted a research associate position at Ames Laboratory, where he remained as of the date of filing. On appeal, the petitioner asserts that the director mischaracterized the letters as deriving mostly from colleagues and the number of published articles. We agree with the petitioner that the director failed to consider the numerous independent letters submitted in this matter. The submission of such letters, in and of itself, is not presumptive evidence of eligibility, however, the content of those letters must also be examined.

The petitioner submitted two letters from his colleagues at the Ames Laboratory. Dr. [redacted], a senior scientist at the Ames Laboratory, asserts that the petitioner developed a new computer-based model to quantitatively predict the solidification path of alloys of interest in the [redacted] systems. The petitioner used this model to determine the compositions to grow single crystals of several alloys, which had not been done before. Dr. [redacted] explains that the petitioner's model saves time and money in identifying new alloys for industrial applications with less hazardous chemicals, such as refrigerants and batteries. Dr. [redacted], another senior scientist at the Ames Laboratory, provides similar information. As of the date of filing, this work had yet to be published and, thus, disseminated to the field. The independent references attest to the potential of this work, but the record lacks evidence of the influence of this work as of the date of filing. The record, however, contains more persuasive evidence regarding the petitioner's prior research.

Dr. [redacted] a professor at the University of Wisconsin-Madison, discusses the petitioner's work at that institution. According to Dr. [redacted] the petitioner created a new thermodynamic model for the defect structure Pdln, a key material being used as contacts for semiconductors. The petitioner demonstrated a defect structure for Pdln that had been "suspected for years."

During his investigation of grain growth in nanoscale Pdln thin films, the petitioner was also able to predict the microstructure at a certain temperature with a specific period of time. These findings have implications for extending the life of conductors. Dr. [redacted] asserts that this work "has drawn wide attention from those in our field working on these issues."

Dr. [redacted] further asserts that the petitioner was able to grow rare earth silicide nanowires on silicon. The petitioner's novel methods of growing rare earth discilicide nanowires have "opened up a new avenue to fabricate one-dimensional nanoscale features and is a new breakthrough toward their final applications in quantum scale devices."

Finally, Dr. [redacted] explains that the petitioner "clarified the complex behavior observed in the sputter deposited [redacted] thin films experimentally." The results of this work, including a theoretical model to predict the optimal annealing time and temperature, are "of enormous importance for the production of sensors in hard disk drives with NiMn films and similar materials by magnetic industries."

The initial letters from independent researchers were not particularly persuasive in that they did not provide specific examples of the petitioner's influence in the field. In response to the director's request for additional evidence as to how the petitioner's work was influencing the field, the petitioner submitted additional independent reference letters. Many of the new letters provide general assertions that the petitioner has advanced the field and that his work has important applications without providing specific examples of researchers adopting or applying the petitioner's results. For example, Dr. [redacted] a technical specialist at Visteon, asserts that the petitioner's research "provides an essential component to advancing hybrid vehicle research and development." While Dr. [redacted] asserts that he has worked on hybrid technology for 10 years, he does not provide an example of how he personally has applied the petitioner's work or indicate that Visteon has expressed an interest in applying the petitioner's methods.

Dr. [redacted] a senior staff engineer at Seagate, however, provides a more persuasive letter. Dr. [redacted] asserts that the petitioner's work with [redacted] "provides an essential piece to our research and understanding of the giant magnet-resistive (GMR) recording head." Dr. [redacted] further asserts that the petitioner developed a kinetic model that successfully predicts certain reactions. Dr. [redacted] concludes that this model "is extremely useful for the production of [redacted] thing films and other materials in [the] reading head."

Finally, Dr. [redacted] discusses hard drive failure and asserts that the petitioner's work "helps us to calculate the diffusion rate of [redacted] atoms at working conditions and estimate the life expectancy of the reading head right award, thus saving us significant resources, i.e. money and time in the research."

While not affirming any reliance on the petitioner's work, Dr. [redacted], Research and Development Director of Advanced Devices Development at Seagate Recording Head Operation, asserts that he knows of the petitioner through reading his published articles and concludes that the petitioner has contributed to the field's understanding of [redacted] a key material used in reading heads for hard disk drives.

The record would obviously be bolstered by evidence that the petitioner has been widely and frequently cited. That said, the petitioner's publication record is notable. For example, the petitioner is first author of an invited paper and also coauthored a rapid communication. Dr. [redacted] a professor at the University of São Paulo in Brazil who has cited the petitioner's "excellent" work, states:

> An invited paper is the elite of the papers reporting significant new findings and usually only those authorities in the field are invited to publish papers by the editors; short communications are brief, preliminary reports of unusual urgency, significance, and interest to the materials community.

Ultimately, the petitioner submitted numerous letters of support from individuals with whom he has not collaborated. These letters provide more than general praise of the petitioner's abilities or assertions of unique abilities. Rather, they cite specific accomplishments and improvements to the field of materials science. These accomplishments are not merely predicted to be beneficial, but have been recognized by a major manufacturer. The petitioner's written work has received at least some favorable consideration in print through minimal citation and, more significantly, selection for an invited paper and a rapid communication. Thus, the evidence in the aggregate, both that discussed in this decision and the remaining evidence of record, is sufficient.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the materials science community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.